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PART-III

GOVERNMENT OF MEGHALAYA

ELECTION DEPARTMENT

ORDERS BY THE GOVERNOR

From the Governor of Meghalaya
Ranjit S. Mooshahary

Raj Bhavan
Shillong-793001
Meghalaya, India

September 6, 2010.

CASE UNDER ARTICLE 192 OF THE CONSTITUTION OF INDIA

Shri Epsan Marak & 2 Others

....

Petitioner

VRS

Shri Ismail R. Marak, MLA

....

Respondent.

ORDER

WHEREAS a petition dated 15th May, 2010 for disqualification of Shri Ismail R. Marak, a sitting MLA under clause (1) of Article 192 of the Constitution has been submitted to Governor, Meghalaya by Shri Epsan Marak and 2 (Two) others .

AND WHEREAS, the said petitioners have averred in their petition that Shri Ismail R. Marak is having a subsisting contract with the Indian Oil Corporation Ltd. (Govt. of India Enterprises) and he was also elected as a Member of the Meghalaya Legislative Assembly on the 3rd March, 2008 thereby making him a holder of the office of profit within the meaning of sub-clause (a) of clause (1) of Article 191 of the Constitution.

AND WHEREAS, the opinion of the Election Commission had been sought in pursuance of clause (2) of Article 192 of the Constitution as to whether Shri Ismail R. Marak has become subject to disqualification from being a Member of the Legislative Assembly under sub-clause (a) of clause (1) of Article 191 of the Constitution.

AND WHEREAS, the Election Commission has given its opinion (vide Annex) under clause (2) of Article 192 of the Constitution to the effect that the jurisdiction of the Governor to decide the question of disqualification of a sitting Member of Legislative Assembly arises only in case of disqualification incurred after election as a

Member of the Legislative Assembly and in view of the well settled constitutional position, as set out in its opinion, the question of alleged disqualification of Shri Ismail R. Marak, being a case of pre-election disqualification, if at all any disqualification was attracted, cannot be raised before the Governor under clause (1) of Article 192 of the Constitution.

AND WHEREAS, it appears that the alleged disqualification is not a post election disqualification.

AND WHEREAS, having carefully considered the facts on record as contained in the opinion of the Election Commission and having been fully satisfied therewith.

NOW THEREFORE, I Shri Ranjit S. Mooshahary, Governor of Meghalaya in exercise of the powers conferred on me under clause (1) of Article 192 of the Constitution do hereby decide that the petition filed by Shri Epsan Marak and 2 others raising the question of disqualification of Shri Ismail R. Marak is not maintainable.

RANJIT S. MOOSHAHARY,
GOVERNOR OF MEGHALAYA.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi—110001
Dated the 2nd August, 2010

11th Sravana, 1932 (Saka)

Reference Case No. 3(G) of 2010

[Reference from the Governor of Meghalaya under Article 192(2) of the Constitution of India]

In re : Alleged disqualification of Shri Ismail R. Marak, MLA, under Article 191(1) of the Constitution of India.

OPINION

This is a reference dated 8th July, 2010, received from the Governor of Meghalaya, seeking the opinion of the Election Commission of India under Article 192(2) of the Constitution of India, on the question of alleged disqualification of Shri Ismail R. Marak, MLA, under Article 191(1)(e) of the Constitution of India.

2. The above question arose on the petition dated 15th May, 2010, submitted by Shri Epsan Marak and two others, to the Governor of Meghalaya, under Article 192(1) of the Constitution of India, raising the question of alleged disqualification of Shri Ismail R. Marak, MLA, for being a member of the Meghalaya Legislative Assembly, under sub-clause (e) of clause (1) of Article 191 of the Constitution of India, read with Section 9A of the Representation of the People Act, 1951. It was alleged that Shri Ismail R. Marak had a subsisting contract with the Indian Oil Corporation (IOC), which is an enterprise of the Central Government, as the IOC had issued a license to him for operating a Petrol Pump at Jadigittim, South Garo Hills District, Meghalaya, *vide* No. SALE SRMP/796-132, dated 31st January, 2008. The allegation of the petitioner is that this license dated 31st January, 2008 amounted to a contract with the Government of India through the IOC. The petitioner contends that Shri Marak should be disqualified under Article 191(1)(e) of the Constitution of India read with Section 9A of the Representation of the People Act, 1951.

3. The petitioner's own case, as stated above, is that Shri Marak was granted license to operate the Petrol Pump by the Indian Oil Corporation on 31st January, 2008 and Shri Marak concealed the fact that he had a license of Petrol Pump, while submitting his nomination paper for contesting the general election to the Meghalaya Legislative Assembly in February-March, 2008, and the results of the election was declared on 3rd March, 2008.

4. It is clear from para 3 above that the question of disqualification, if at all there is any, raised in the petition is a question of pre-election disqualification. It is well settled that under Article 192(1) of the Constitution of India, the jurisdiction of the Governor to decide question of disqualification of a sitting Member of Legislative Assembly arises only in disqualifications incurred after election as a member of the House. The jurisdiction of the Election Commission to inquire into such question of alleged disqualification, on being referred to it by the Governor under Article 192(2) of the Constitution, also arises only in case of post-election disqualification. Any question of pre-election disqualification, i.e. disqualification from which a person was suffering, at the time of or prior to his election, can be raised only by means of an election petition presented in accordance with the provision of Article 329(b) of the Constitution read with Part-VI of the Representation of the People Act, 1951, and not under Article 192(1). Reference is invited, in this connection, to the Supreme Court's decisions in *Election Commission Vs. Saka Venkata Rao* (AIR 1953 SC 201); *Brundaban Naik Vs. Election Commission* (AIR 1965 SC 1892); *Election Commission Vs. N.G.Ranga* (AIR 1978 SC 1609); etc. In a very large number of other similar cases of pre-election disqualification in the past, the Commission has given similar opinion, on the references made to it by the President and Governors of States.

5. In view of the well-settled constitutional position referred to above, the question of the alleged disqualification of Shri Ismail R. Marak, being a case of pre-election disqualification, if at all, cannot be raised

under Article 192(1) of the Constitution. The Election Commission also has no jurisdiction to express any opinion on the question of such alleged pre-election disqualification. The present petition is, therefore, not maintainable before the Governor in terms of Article 192(1) of the Constitution. From the facts stated in the petition, it is apparent that the alleged disqualification was incurred prior to even the filing of nomination by the respondent. Therefore, the Commission is not required to go into the merits of the allegation of disqualification raised in the petition.

6. The reference received from the Governor of Meghalaya, in the present case, is accordingly, returned with the opinion of the Election Commission of India, under Article 192(2) of the Constitution, to the above effect that it is not maintainable under Article 192(1) of the Constitution.

V. S. SAMPATH,
Election Commissioner

S. Y. QURAISHI,
Chief Election Commissioner

Place : New Delhi

Dated : 2nd August, 2010.

Under Secretary to the Govt. of Meghalaya,
Elections Department.